

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:07-CV-166-H
ALL CASES

LEE LEWIS and JANICE HOSLER, et al.,

Plaintiffs,

v.

SMITHFIELD PACKING COMPANY, INC.,

Defendant.

**MEMORANDUM AND
RECOMMENDATION**

This case comes before the court on the consent motion (D.E. 335) of plaintiffs Lee Lewis, et al. (“plaintiffs”) and defendant Smithfield Packing Company, Inc. (“defendant”) for summary judgment dismissing the claims of opt-in plaintiff Jennifer Gillespie (“Gillespie”), who worked at defendant’s Tarheel, North Carolina facility for only one day. The motion is supported by the declaration of Teri Beard (D.E. 335-1), defendant’s Human Resources Information System Benefits Manager.

The Fair Labor Standards Act allows parties to recover unpaid overtime wages from their employer. 29 U.S.C. §§ 201, *et seq.* The instant motion seeks to dismiss the claims of Gillespie, who, according to defendant’s records, worked at defendant’s Tarheel facility for only one day, and thereby did not exceed 40 hours of work in a week and earn overtime wages as a matter of law. Plaintiffs’ counsel concedes that there is no evidence that Gillespie worked at the Tarheel facility for longer than one day and that her claims are subject to dismissal pursuant to Rule 56 of the Federal Rules of Civil Procedure. The court finds that no genuine issues of material fact are presented and that the relief sought should be allowed.

For the foregoing reasons, it is RECOMMENDED that the parties' consent motion for summary judgment dismissing Gillespie's claims be ALLOWED and this action be DISMISSED as to her.

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have 14 days, or such other period as the court specifies, to file written objections. Failure to file timely written objections bars an aggrieved party from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

SO ORDERED, this 12th day of July 2010.



James E. Gates
United States Magistrate Judge